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HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2801 OF 2007.

1. Mr. S. M. Kamble.
2. Mr. B. M. Choudhary.
3. Mr. D. V. Shinde. .. Petitioners.

V E R S U S

1. The Jt. Registrar, Co-operative Societies, CIDCO, Navi Mumbai.

2. Palm Towers Co-operative Housing Societies Ltd..

3. Mr. P. M. Patil,
Claiming to be an Administrator,
C/o: The Jt. Registrar, C.S. CIDCO,
Raigadh Bhavan, 3rd Floor,
CBD Belapur, Navi Mumbai.

4. Mr. D. P. Dohale,
also claiming to be an Administrator,
C/o: The Jt. Registrar, C.S. CIDCO,
Raigadh Bhavan, 3rd Floor,
CBD Belapur, Navi Mumbai.

5. CIDCO, Cidco Bhavan,
CBD Belapur, Navi Mumbai.

6. State of Maharashtra. .. Respondents.

Mr. Y. S. Jahagirdar, Sr. Councel with Mr. V. B. Naik and C. D. Mehta and Mrs. Trupti Shetty i/b M/s. Dhruve Liladhar & Co., for the petitioner.

Mr.C.R.Sonawane A.G.P. for the respondent no.1 to 4.

Mr. K. K. Tated for the respondent no. 5.

CORAM: S. B. MHASE &
D.G.KARNIK,JJ.

DATE: SEPTEMBER 19, 2007.

P.C.

1. Counsel for the petitioner seeks leave to

delete respondent no.6, the State of Maharashtra which has been joined as a formal party. Leave granted. Respondent no.6 stands deleted.

2. Counsel for the parties handed in the minutes of order signed by the Advocates for the petitioner and by respondent nos. 1 to 5 individually. Minutes of order are taken on record and marked "X" for identification. We accept the minutes of order. We however record our reasons for the order.

3. Respondent no.2 is a Co-operative Housing Society, which at the relevant time had about 100 members. Respondent no.5 has allotted/ granted a lease of a plot of land situated at Nerul, Navi Mumbai being Plot No.11, Sector No. 42-A to the respondent no.2 for construction of flats for its members. On account of removal of three and resignation of two members of its Managing committee, the strength of the managing committee was reduced to 2, which was less than the quorum for the meetings of the managing committee. Respondent no.1, therefore, appointed respondent no.3 as an Administrator vide order dated 20th December 2006. By a subsequent order dated 20th February 2007 respondent no.3 was replaced by respondent no.4 as an Administrator of respondent no.2. On 20th February 2007 the Administrator wrote a

letter to respondent no.5 - CIDCO stating that some of the members admitted by respondent no.2 were not residing in the State of Maharashtra for the minimum required period of 15 years, and therefore were not eligible for allotment of flats in the plot allotted by the CIDCO and were not eligible for becoming the members of respondent no.2 Society. Respondent no.5 accepted the said letter without any verification as to the eligibility of the members and by a letter dated 1st March 2007 informed the Administrator that "No Objection Certificate" granted by the CIDCO for the said members' membership stood withdrawn. Respondent no.5, however, made it clear that if any dispute arose between the society and the members it would not be responsible for the same. This was probably done because respondent no.5 acted upon the letter of the Administrator that some of the members were not eligible for membership, without verification of the facts stated in the letter of the Administrator. Thereafter on 2nd March 2007, the Administrator wrote a letter to the 27 members that they had ceased to be the members of the society as they were not eligible to be the members of respondent no.2 - society.

4. The Administrator also proposed to expel 12 more members on certain other grounds. Accordingly, he issued a show cause notice dated 10th March 2007 to the 12 members asking them to show cause as to why

they should not be expelled. He then convened a meeting of the General Body of respondent no.2 Society on 17th march 2007, inter alia to consider the issue of expulsion of the said 12 members. It is the case of the respondents that on 17th March 2007 a resolution was passed by the general body of respondent no.2- society expelling the said 12 members.

5. Though initially the writ petition was filed for some limited purposes, the petition has been amended to challenge the action of the Administrator declaring that 27 members had ceased to be the members of the respondent no.2 society and challenging the action of the Administrator expelling 12 members.

6. It appears that in the meeting of 17th March 2007 apart from expelling 12 members it was resolved to change the Architect / Developer who was to construct the building and to appoint a new Architect / Developer in his place. The respondent no.2 society also purpotedly resolved to grant additional FSI not exceeding 0.5 times of the then sanctioned FSI to the new Architect / Developer in consideration of his not claiming any escalation in the cost of construction. The resolution also purpotedly authorised the Administrator to do all acts that were necessary for the aforesaid purpose. That

resolution is also impugned in this petition.

7. It further appears that the Administrator accepted the application of some new persons and admitted new persons as members of the respondent no.2 - Society, though the copies of the applications received from them and the resolutions admitting them as members are not filed on record. The record also does not disclose whether those persons who were purpotedly added as new members have paid the entrance fee or share money to the respondent no.2- Society.

8. In the light of submissions which were made by the Counsel, before they filed the minutes of the order we are required to consider in this petition legality and validity of following actions of the Administrator.

(i) Declaration by the respondent nos. 2 to 4 that 27 members have ceased to be the members of the respondent no.2 - society.

(ii) Alleged expulsion of 12 members.

(iii) The resolutions purportedly passed in the General Body Meeting dated 17th March 2007 including resolution regarding change of Architect / Developer and grant of additional FSI to him.

(iv) Action of the Administrator in purporting to admit new members.

9. **Regarding Cessation of Membership**.

. According to the Administrator the plot of land was allotted by the CIDCO for construction of flats to be allotted only to the persons who were residing in the State of Maharashtra for more than 15 years prior to the allotment of the land; only such persons are eligible to become the members of the respondent no.2 - society. According to the Administrator, 27 persons who were admitted as members of the respondent no.2 - Society before his appointment and whose names were also approved by the CIDCO, were not residing in the State of Maharashtra for the required period of 15 years or more and therefore were not eligible to become members. Therefore they ceased to be the members of the respondent no.2 - society.

10. Section 25 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the Act") provides for cessation of membership, which reads thus:

> "25. Cessation of Membership -
>
> A person shall cease to be a member of a society on his resignation from the membership thereof being accepted, or on the transfer of the whole of his share or interest in the society to another member, or on his death, or removal or expulsion from the society,

> or where a firm, company, any other corporate body, society or trust is a member, on its dissolution or ceasing to exist"

. Section 25 provides that a person ceases to be a member of the society on his resignation being accepted or on his transfer of the whole share or interest in the society to another member or on his death or on his removal or expulsion from the society. Admittedly none of the aforesaid things had happened. Therefore 27 members could not have automatically ceased to be the members, merely on the ipsi dixit of the Administrator that they were not residing in the State of Maharashtra for the required period of 15 years or more and therefore they were not eligible to be the members. No enquiry was held, no notice was issued and no opportunity of hearing was given to the 27 members before the Administrator declared that they had ceased to be the members. The CIDCO also while withdrawing the "No-Objection Certificate" did not hold any enquiry but had merely relied upon the assertion of the Administrator that 27 members were not eligible to be the members. In fact the CIDCO has made its position safe by saying that it will not be responsible for any dispute that may arise between the society and its members regarding cessation of their membership. When the matter was heard for two sittings yesterday and in the morning sitting today,

learned AGP Mr. Sonawane could not point out any provision either in the Act or the Rules or Bye-laws of the society about the automatic cessation of membership other than Section 25 of the Act. In our view therefore by mere ipsi dixit of the Administrator that 27 members were ineligible and ceased to be the members of the society cannot be accepted. It is one thing to say that a person is not eligible and therefore not admit him as a member and quite another to say that having been admitted he ceases to be member being ineligible. In the latter case only course to terminate his membership against his wish is to expel him in accordance with the procedure prescribed by the Act, Rules and the Bye-laws. The Administrator had no power to unilaterally declare that 27 members, or for that matter any member, being disqualified has ipso facto ceased to be a member.

11. Regarding Expulsion of 12 members.

. 12 members were purpotedly removed for the alleged breaches committed by them. Section 35 of the Act which provides for the expulsion of members, reads thus:

"35. Expulsion of members.

> (1) A society may, by resolution passed by a majority of not less than three-forths of the members entitled to vote who are present at a general meeting held for the purpose expel a member for acts which are detrimental to the interest or proper working of the society;
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> Provided that, no resolution shall be valid, unless the member concerned is given opportunity of representing his case to the general body, and no resolution shall be effective unless it is approved by the Registrar.
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> (2) No member of a society who has been expelled under the foregoing sub-section shall be eligible for re-admission as a member of that society, or for admission as a member of any other society, for a period of one year from the date of such expulsion;
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> Provided that, the Registrar may, on an application by the society and in special circumstances, sanction the re-admission or admission, within the said period, of any such member as a member of the said society or of any other society, as the case may be."

. In our opinion, therefore, for expelling a member, the following conditions must be fulfilled.

(i) The society is required to issue notice of the proposed expulsion of the member to enable him to show cause why he should not be expelled.

(ii) The member concerned would be entitled to be heard and must be given an

opportunity of representing his case to the general body meeting in which the resolution proposing the expulsion is proposed.

(iii) The resolution of expulsion must be passed by a majority of not less than three -fourths of the members entitled to vote who are present at a general body meeting.

(iv) A member cannot be expelled merely on fanciful grounds, and can be expelled for acts which are detrimental to the interest or proper working of the society.

(v) A resolution of expulsion passed in the general body meeting shall not be effective unless it is approved by the Registrar.

12. In the present case aforesaid conditions were not satisfied. Our attention was invited to the Minutes of the general body meeting held on 17th March 2007. From the said Minutes it appears that 14 members who were present at the place of the meeting were prevented from entering the meeting hall on the ground that they had already ceased to be the members. Out of 34 other members who were present 19 insisted that those 14 members should be allowed to participate

in the meeting but it was not agreed by the Administrator. Therefore 19 members staged a walk out, as holding the meeting would be illegal. 12 members who were to be expelled in the meeting do not appear to have been given an opportunity of hearing and representing their case in the meeting. In fact there is no material on record to show that even a simple notice to show-cause against their expulsion was given to them. The meeting was convened on 10th March 2007. It was not in accordance with the bye-laws of the society and notice of the meeting required to be given as per Rule No.60(11) was of a period shorter than the period prescribed under the bye-laws of the society. The meeting of the general body was thus not convened by a valid notice and all the resolutions including the resolution of the expulsion of 12 members are therefore illegal.

13. Regarding Change of Contractor and Granting Additional FSI.

. As stated earlier 15 members who were present at the meeting, and were entitled to attend and vote at the meeting were not allowed to enter the meeting hall. Thus, the members were prevented from voting at the meeting. The meeting was not convened with a valid notice. The notice was of shorter

duration. Therefore, the meeting of 17th March 2007 was illegal. The proceedings of the meeting dated 17th March 2007 were illegal and all resolution passed therein including regarding change of Architect / Developer and the resolution granting additional FSI to the extent of 0.5 times the existing FSI, are all illegal.

14. It may also be noted that the Administrator was appointed for the purpose of holding elections and to constitute a proper managing committee. The Administrator is not ordinarily required nor expected to take policy decisions. In any event the Administrator should not have taken the policy decision regarding disposal of the property of the society. Awarding of the additional FSI to the extent of 0.5 times the existing FSI certainly amounts to disposal of property of the society. The entire FSI belongs to the society. Sanctioning the unutilised FSI to a new Architect / Developer amounted to transfer of the property in the FSI belonging to the society. The property is situated in Navi Mumbai. We are told at bar that the valuation of the additional FSI which was about 40,000 square feet would be in excess of Rs. 12 crores. Bye-law no.100 of the society provides for 15 clear days' notice for convening a special general body meeting. The general body meeting dated 17th March 2007 in which the

sanction for transfer of FSI was purported to be obtained was convened by issuing only 7 days notice. The notice of the meeting was of shorter duration. Everything appears to have been done in haste to transfer the property of the society without adequate consideration. Therefore all proceedings held in the meeting on 17th March 2007 are illegal.

15. Admission of new members by the Administrator.

. In **K. Shantaraj v/s. M. L. Nagaraja, AIR-1995 SC 2925** the Supreme Court, while interpreting the provisions of Karnataka Co-operative Societies Act, 1959 has held that the Administrator has no power to enroll the new members; he has only power to organise the election in accordance with the law, and the bye-laws of the society. This decision was followed and the ratio thereof was re-affirmed by the Supreme Court in **Joint Registrar of Co-operative Societies, Kerala v/s. T. A. Kuttappan and others reported in (2000) 6 SCC 127**. Therein after considering the provisions of the Karnataka Co-operative Societies Act, 1959 as well as the Kerala Co-operative Societies Act, 1969 the Supreme Court re-iterated the position that the Administrator or the Committee of Management appointed (by the Registrar)

to administer the society while the regular managing committee is under suspension does not have the power to enrol new members. Enrolment of new members would involve the alteration or the composition of the society itself and such a power should be exercised by an elected committee rather than by an administrator or a committee appointed by the Registrar while the regular management committee is under suspension.

. Section 32(4) of the Kerala Co-operative Societies Act, 1969 is par-materia with section 78(2) of the Maharashtra Co-operative Societies Act, 1960. In our view even in respect of the Co-operative societies governed by the Maharashtra Act of 1960 the administrator appointed by the Registrar under section 78 should not ordinarily enroll new members and he is not expected to take any policy decision which would involve the alternation of composition and capital of the society. In the circumstances, the admission of the new members by the Administrator was beyond his powers and illegal.

16. This matter was heard for almost two sittings yesterday. It was only after it became apparent at the hearing that the actions of the Administrator were illegal and some even beyond his powers that the minutes of the order are tendered today, wherein the parties have agreed that all the

impugned actions taken by the Administrators be set aside. For the reasons recorded earlier we accept the said minutes of the order and direct the order in terms of the minutes order subject to following directions.

17. We direct that the Administrator shall not hereinafter take any policy decision and shall conduct the elections of the respondent no.2 - society in accordance with the existing list of members. The members who were the members on 20th December 2006 when the Administrator was first appointed by the Registrar would only be the voters. The members who were purportedly enrolled as such by the Administrator shall not be included in the voters' list. The Administrator shall conduct the elections strictly in accordance with law, rules and bye-laws of the society, and in particular bye-law no. 116 Annexure -III to the Bye-laws of the respondent no.2 - society. Respondent no.1 Registrar shall appoint an Officer not below the rank of an Assistant Registrar, Co-operative Societies as a returning Officer. The election shall be conducted as expeditiously as possible preferably within two months. Subject to the aforesaid directions, the minutes of order are accepted, and there shall be order in terms thereof. The minutes of order shall form part of this order.

(D.G.KARNIK, J.) (S.B.MHASE, J.)